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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/600,179

06/20/2003

Steven E. Barile

42P15785

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04/07/2011

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EXAMINER

JAKOVAC, RYAN J

ART UNIT

PAPER NUMBER

2445

NOTIFICATION DATE

DELIVERY MODE

04/07/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/600,179	<b>Applicant(s)</b> BARILE, STEVEN E.	
	<b>Examiner</b> RYAN J. JAKOVAC	<b>Art Unit</b> 2445	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-17 and 19-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-17, 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/26/2011, 10/25/2010</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Acknowledgements**

1. This action is in response to communications filed 01/26/2011. Claims 1, 3-17, 19-27 are currently pending.

### **Response to Arguments**

2. Applicant's remarks filed 01/26/2011 have been fully considered.
3. Applicant's arguments in summary that Meyers does not teach or render obvious the limitation: "expanding the initial play list by recommending to the user additional content unrelated to preferences of the use". Meyers teaches that the content may be selected by the user, or that it may be selected by the web server (Meyers, col. 3:56-61). The selection by the web server is independent the user's preferences since the portion recites that the user may select preferences as to what content is desired, **or** the content type is selected by the web server. Further, Meyers discloses that algorithms are used for the selection of the content which are influenced by external triggers such as the time of day and other factors unrelated to user preference (see Meyers col. 4:63-67 to col. 5:1-7.). Therefore the Examiner respectfully disagrees with the Applicant.
4. Upon application of a new reference, new grounds of rejection are presented below.

### **Claim Rejections - 35 USC § 101**

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 17 is rejected under 35 USC 101 because the claimed invention is directed towards nonstatutory subject matter.

7. The claim(s) are drawn towards a “machine accessible medium”. Applying the broadest reasonable interpretation in light of the specification and taking into the account the meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art (MPEP 2111), the claim as a whole covers both transitory and non-transitory media. A transitory media does not fall into any of the four statutory categories of invention. The Examiner suggests including a recitation of a “non-transitory machine accessible medium”.

### **Claim Rejections - 35 USC § 103**

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. **Claims 1, 3-5, 7-9, 11-15, 17, 19-21, 23-25, 27 are rejected** under 35 U.S.C. 103(a) as being unpatentable over U.S. 2002/0052933 to Leonhard et al (hereinafter Leonhard) in view of U.S. 7,496,947 to Meyers.

**Regarding claims 1, 8, 17, 24,** Leonhard discloses a method comprising:

creating a play list (Leonhard, see fig. 10, list of songs created by adding songs to project playlist according to user search results. See [0214].);

submitting the play list to a multimedia content provider through the network (Leonhard, see fig. 11, list of songs is submitted to the server. See fig. 12, current project comprising list of songs. See [0222].),

wherein the multimedia content provider gathers multimedia content specified in the play list (Leonhard, fig. 12, list of songs specified in the project are gathered and presented.);

downloading the multimedia content to a multimedia content cache (Leonhard, fig. 12, multimedia content presented for download to client. [0217], music file downloaded to client storage. See also [0225].);

wherein creating the playlist comprises: creating an initial play list based on at least one of the following: specifications by the user, a play list pre-defined by the user (Leonard, fig. 10, 12, user selected playlist of songs.), and a play list pre-determined by the multimedia content provider.

Leonhard discloses downloading to a client but does not explicitly that the client is a portable device, however, Meyers discloses downloading multimedia content to a portable

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device (Meyers, abstract, content is downloaded to a portable device such as an MP3 player or mobile phone. See also, col. 2:15-24.).

Leonhard further fails to teach, but Meyers teaches:

playing the multimedia content on the portable device (Meyers, col. 2:5-10, content played on the portable device.);

occasionally connecting a portable device of a user to a network (Meyers, abstract, col. 3:34-35, portable device is intermittently connected to the internet.);

disconnecting the portable device from the network (Meyers, abstract, col. 3:34-35, portable device is intermittently connected to the internet.);

recording feedback from the user about the multimedia content specified in the play list (Meyers, abstract, user data and preferences including ratings related to a custom broadcast (i.e. playlist) are uploaded from an intermittently connected mobile device such as an mp3 player or mobile phone. See also, col. 2:15-24.),

wherein the feedback is recorded on the portable device and the feedback comprises a plurality of ratings, each rating of the plurality of ratings corresponding to a respective title of the multimedia content specified in the play list (Meyers, col. 2:10-24, user ratings of content, col. 5:40-46, user song ratings.);

uploading the feedback from the portable device to the multimedia content provider when connected to the network (Meyers, feedback is uploaded from portable device. See also col. 5:49-54: *"During the next connection between the device and the Web site, the user ranking is uploaded to the Web site..."*),

wherein the multimedia content provider uses the plurality of ratings to provide recommended multimedia content to the user (Meyers, col. 4:25-30, ratings used to suggest content.); and

selectively downloading the recommended multimedia content to the multimedia content cache in the portable device (Meyers, col. 3:60-67, preferences and rankings used to select *content for download. See also abstract, "User data and preferences can also be uploaded to the Web site to influence the type of data that is downloaded."*).

expanding the initial play list by recommending to the user additional content unrelated to preferences of the user (Meyers, col. 3:56-61, col. 4:64-67, col. 5:1-7, col. 6:25-27, expansion of custom broadcast including content selections by server and according to algorithms unrelated to user preferences.); and

refining the expanded initial play list based on the feedback (Meyers, abstract, col. 3:60-67.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leonhard and Meyers. The motivation to do so would be in order to provide targeted multimedia content for downloaded to a portable device (Meyers, col. 1:46-52.).

**Regarding claim 3, 19**, the combination of Leonhard and Meyers teaches the method of claim 2, wherein expanding the initial play list comprises cross-pollinating the initial play list using play lists of other users (Meyers, col. 4:26-30, cross-correlation of user ratings/preferences.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leonhard and Meyers. The motivation to do so would be in order to provide targeted multimedia content for downloaded to a portable device (Meyers, col. 1:46-52.).

**Regarding claim 4, 9, 20, 25**, the combination of Leonhard and Meyers teaches the method of claim 1, wherein the portable device comprises a computer (Meyers, abstract, MP3 player or mobile phone. See also col. 3:20-25.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leonhard and Meyers. The motivation to do so would be in order to provide targeted multimedia content for downloaded to a portable device (Meyers, col. 1:46-52.).

**Regarding claim 5, 21** the combination of Leonhard and Meyers teaches the method for claim 1, wherein playing the multimedia content comprises accessing the multimedia content and rendering the multimedia content to the user (Meyers, abstract, col. 2:5-10, content played on the portable device.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leonhard and Meyers. The motivation to do so would be in order to provide targeted multimedia content for downloaded to a portable device (Meyers, col. 1:46-52.).

**Regarding claim 7, 23**, the combination of Leonhard and Meyers teaches the method for claim 1, wherein the network comprises at least one of the following: a local area network, a



wide area network, the Internet, a terrestrial broadcast network, and a wireless network (Leonhard, fig. 1, internet.).

**Regarding claim 11, 27**, the combination of Leonhard and Meyers teaches the method of claim 8, wherein the database comprises at least one of static and dynamic multimedia content (Leonhard, fig. 12, multimedia content. [0217], music file.).

**Regarding claim 12**, Leonhard teaches a system comprising:  
a play list creator capable of creating a play list of multimedia files accepted and arranged by a user (Leonhard, see fig. 10, list of songs created by adding songs to project playlist according to user search results. See [0214]. See fig. 12, current project comprising list of songs.),

Leonhard does not expressly disclose, but Meyers discloses:  
a user feedback uploading mechanism capable of recording feedback from the user on a portable device about the multimedia content specified in the play list, wherein the feedback is uploaded from the portable device to a multimedia content provider and the feedback comprises a plurality of ratings (Meyers, abstract, user data and preferences including ratings related to a custom broadcast (i.e. playlist) are uploaded from an intermittently connected mobile device such as an mp3 player or mobile phone. See also, col. 2:15-24.),

each rating of the plurality of ratings corresponding to a respective title of the multimedia content specified in the play list (Meyers, col. 2:10-24, user ratings of content, col. 5:40-46, user song ratings.), and

a recommendation mechanism capable of using the plurality of ratings to provide recommended multimedia content to the user, wherein the multimedia content provider is capable of providing the multimedia files specified by the play list for a user to download (Meyers, col. 3:60-67.), and

wherein the recommendation mechanism is further capable of recommending to the user additional content unrelated to preferences of the user (Meyers, col. 3:56-61, col. 4:64-67, col. 5:1-7, col. 6:25-27.);

a portable multimedia content cache capable of receiving the multimedia files through a network while occasionally connected and storing the multimedia files (Meyers, col. 3:60-67, *preferences and rankings used to select content for download. See also abstract, "User data and preferences can also be uploaded to the Web site to influence the type of data that is downloaded."* See abstract, col. 3:34-35, intermittent connection.); and

a portable multimedia content player capable of accessing and rendering the multimedia contents to the user (Meyers, see at least col. 2:5-19.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leonhard and Meyers. The motivation to do so would be in order to provide targeted multimedia content for downloaded to a portable device (Meyers, col. 1:46-52.).

**Regarding claim 13**, the combination of Leonhard and Meyers teaches the system of claim 12, wherein the play list creator further comprises:

a play list generating mechanism capable of generating a play list (Leonhard, see fig. 10, list of songs created by adding songs to project playlist according to user search results. See

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[0214]. See fig. 12, current project comprising list of songs.); and a pre-determining mechanism capable of at least one of the following: receiving parameters specifying the user's preferences (Meyers, col. 2:1-5, receiving user preferences.), loading a user pre-defined play list, and providing a number of play lists pre-determined by the multimedia content provider;

and wherein the recommendation mechanism is further capable of expanding the play list by recommending additional multimedia files (Meyers, col. 3:56-61, col. 4:64-67, col. 5:1-7, col. 6:25-27.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leonhard and Meyers. The motivation to do so would be in order to provide targeted multimedia content for downloaded to a portable device (Meyers, col. 1:46-52.).

**Regarding claim 14**, the combination of Leonhard and Meyers teaches the system of claim 12, wherein the multimedia content provider comprises:

a communication port; a multimedia content database (Meyers, abstract, fig.3.);

a searching mechanism capable of searching the multimedia content database for multimedia files in the play list (Meyers, col. 3:60-67.); and

a content processing mechanism capable of at least one of the following: packaging, encrypting, compressing, and encoding the multimedia files (Meyers, col. 1:46-52.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leonhard and Meyers. The motivation to do so would be in order to provide targeted multimedia content for downloaded to a portable device (Meyers, col. 1:46-52.).

**Regarding claim 15**, the combination of Leonhard and Meyers teaches the system of claim 12, wherein the portable multimedia content cache comprises:

a communication port; a receiving component capable of downloading and receiving the multimedia files from the multimedia content provider through a network (Meyers, col. 3:60-67, *preferences and rankings used to select content for download. See also abstract, "User data and preferences can also be uploaded to the Web site to influence the type of data that is downloaded."*); and a storage component capable of storing the multimedia files (Meyers, col. 1:46-52.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leonhard and Meyers. The motivation to do so would be in order to provide targeted multimedia content for downloaded to a portable device (Meyers, col. 1:46-52.).

11. **Claims 6, 10, 16, 22, 26 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Leonhard in view of Meyers and further in view of U.S. 7,130,251 to Morohashi.

**Regarding claim 6, 10, 16, 22, 26**, the combination of Leonhard and Meyers teaches the method for claim 5, a multimedia content rendering mechanism capable of rendering the multimedia files to a user (Meyers, abstract, MP3 player or mobile phone. See also, col. 2:15-24.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leonhard and Meyers. The motivation to do so would be in order to provide targeted multimedia content for downloaded to a portable device (Meyers, col. 1:46-52.).

Leonhard and Meyers do not expressly disclose, but Morohashi discloses:

wherein accessing the multimedia content comprises at least one of the following:  
unpacking, decrypting, decompressing, and decoding the multimedia content (Morohashi, col. 11:13-34, *"In a playback operation, musical data compressed and encoded by the compression encoder 12 and then recorded and stored in the HDD 10 is read out from the HDD 10 and supplied to a compression decoder 21 by way of the bus 40. The compression decoder 21 decodes and decompresses the compressed musical data."*).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Leonhard, Meyers, and Morohashi. The motivation to do so would be in order to facilitate the playback of compressed digital music data (Morohashi, col. 11:13-34.).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003. The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan Jakovac/

Examiner, Art Unit 2445